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SOME UNPALATABLE SUGGESTIONS.

BY W. D. HOWELLS.

"A THOUSAND expressions," says Heine, "have the Arabs for the horse, the French for love, the Germans for beer, and the English for hanging." Nothing seems to have appealed so vividly to the fancy of our forefathers from the time when a thief could be hanged for stealing the value of a shilling down to the time when our forefathers became our elder brothers, and people could be hanged only for a very few crimes besides murder. When they could be hanged for nothing but murder, the merry conception of hanging still remained, and the fond associations which clustered about the gallows-tree attested the tenderness of our race for the old ideal. Our race is otherwise tough, and its sensibilities are of a leathery consistence which does not readily yield to reason or emotion. This is supposed to be something fine, and to keep us the superiors of the races apt to be carried away by logic or pity. At the period when not only forgers and housebreakers and footpads, but petty larceners were hanged as well as murderers, a man so quite typically good as Doctor Johnson habitually spoke of the popular punishment with complacency, and often with cheerfulness close upon hilarity. He might compassionate certain offenders, and it is well known how hard he tried to move the King to mercy for a clergyman who had imitated the signature of the Earl of Chesterfield; but that all such offenders were justly punished by death he had apparently no doubt. Commoner people were touched in like manner by particular cases, such as that of several persons who were found guilty of stealing some handkerchiefs worth a shilling, but whose lives were saved by the kind-hearted shopkeeper's swearing that the handkerchiefs were worth only ninepence. The convicts were then merely transported for fourteen years,

and one of them lived to write a very agreeable autobiography; but the rule was that thieves were hanged, and rightly, almost blithely. The literature of the time abounds in proofs of the humorous gayety with which Englishmen regarded the favorite expiation. "The Beggar's Opera" is full of such felicities, and that famous masterpiece doubtless contributed many witty expressions to the thousand with which the imagination of our race has caressed it.

There has always and everywhere been a tendency to euphemize the names of punishments, which has probably come from the superexcited humorous sense of the sufferers, or from the intellectual leisure which abounds in the lives of prisoners, and of criminals who are not yet, or yet again, prisoners. Sometimes it seems to come from a wish for scientific precision and succinctness in the lawmakers. A graphic instance is the verb "exoculate," which was created in the necessity of briefly describing the process of putting out the eyes of offenders condemned to lose their sight. Exoculation in the Eastern Empire was largely applied to the next of kin in the case of political evil-doers sentenced to death; but the traveller Vambéry saw it, not a generation ago, inflicted upon eight or ten respectable business men in Persia; his description of it is rather terrible. "Decollation" is a polite Latinism for cutting off heads; and there seems an instinctive endeavor for some term in like cases which shall either mask or burlesque the fact. Ever since the introduction of State-homicide by electricity, we have ourselves been seeking a word which should say it comprehensively and inoffensively. We have got no further than "electrocution," a mongrel vocable as hateful to the philological sense as "automobile"; it should be either wholly a Greek derivative or a Latin; "the mixture of the two" is, as Browning says, "a marvel and a curse." But we lack still more a polite or a jocose euphemism for the penalty which the State, in the spirit of Oriental jurisprudence, visits upon the family of a man sentenced to a term in prison. I do not mean the infamy; society in its less organized form looks after that; but I mean the total deprivation of the criminal's family of the support, such as it was, which it received from him. "Pauperization" would do, but it seems a weak word, and it has been used so often in warning people not to give alms, that the sharper primitive sense is worn off it.

We require still some locution which shall fully express the fact, and yet shall travesty or soften it so that it shall either amuse us or reconcile us to it through an elegant exactness of epithet. Possibly the convicts themselves have a phrase for it; but, as it is, the fact is not even roughly realized by the public at large, as it might be if sentences were run to some such effect as that John Doe, or Mary Doe, should be imprisoned in the penitentiary for five or ten or fifteen years, and that, in the mean time, his or her children, or dependent father, mother, brothers or sisters should be denied his or her earnings, which the State should seize and retain as an added punishment.

Sometimes, in visiting Courts of Justice, as they are called, it has seemed to me that all sentences were still too severe. I have, for instance, found it monstrous that for a very trifling theft, which would indeed once have hanged a man or a boy, the culprit should be sent up, or sent over, as the direction of the prison chanced to be, for say three months. As for a sentence of ten or fifteen years one must feel that it should never be passed for anything but for the most heinous offence; and I hold now that any added punishment, any accumulated misery, is atrocious, especially if it falls upon the convict's family, as it chiefly must when the State confiscates the prisoner's earnings. Even when he has no family, it is hardly less abominable to withhold his wages, for when he comes out of prison at the end of his time, he comes out an exasperated beggar, whom, if he is known to have been a felon, no one will willingly employ and very few befriend. Wretches like that have then nothing before them but crime, and they commit new crimes because they must; they go back to prison, and so continue on in a vicious circle to the end. They swarm by hundreds of thousands all over the land, in and out of jail, and their lot seems without hope unless there is some hope for them in such a scheme as a recent observer has suggested. One cannot seriously consider the proposition of the United States Attorney-General that they shall be put to death after a certain number of repetitions of their offences against society, though that suggestion is something which should give him much serious thought hereafter. But a writer in a recent number of a sociological journal proposes, rather less impossibly, the establishment of a "Court of Rehabilitation," as he calls it. This Court shall inquire into the conduct of the pris-

oners, whose sentences shall all have been made indeterminate, and whose imprisonment shall end when the fact of their genuine repentance is convincingly ascertained. A verdict of the Court of Rehabilitation in their favor shall be the warrant to society that they are fit to enter upon some honest employment, and may be safely trusted with life and property when they are liberated. I need not follow the reasoning by which the writer seeks to persuade us that the inquiries of such a court are practicable, and that its finding may be confidently accepted. What is self-evident is that it would be infinitely better than nothing, and that the criminals whom it rehabilitated would be incomparably usefuller men than those whom a determinate sentence now frees to prey upon society.

Indeterminate sentences we already have, but there is nothing to certify formally to the public that the prisoner who comes out sooner is a fitter man to resume his economic and social place than the prisoner who comes out later. He has the stigma upon him, and his fellow men are not invited to trust him as they would be if a verdict of the Court of Rehabilitation declared him, by every reasonable test, a penitent man. The writer who urges the establishment of such a tribunal bases his argument in its favor on the strong belief that when a prisoner has no hope of escape but through reform he will accept the conditions, and in mere self-interest make the effort to be henceforward an honest man, with those helps to his reform which assiduous moral and intellectual training in prison will have supplied him. This is taking him on a very low plane, but the plane is not lower than that on which we all, who have somehow kept out of jail, try, from time to time, to rebuild our characters; and by a very little effort we can sympathize with a reformer who asks our sympathy on the level of our average human nature.

But we have to do here only with his incidental suggestion (which I will own has reminded me of the neglected purpose of the present essay) that the criminal shall be paid fair wages by the State during his imprisonment, and that when he is released he shall be given his earnings to live upon until he can find something to do. This part of the scheme is not so novel as the whole scheme, and it seems more immediately practicable. It has been more than once proposed in different States: only winter before last, a bill to enact it was, I believe, introduced into the Ohio

legislature, where it probably met the accustomed fate of such bills at the hands of the economists who look to it that the State, or at least the contractors, shall profit by the unpaid labor of convicts. Such economists have perpetuated with us those ideals of Oriental jurisprudence by which the innocent are made to suffer as much as possible with the guilty; and they insist that, when a criminal is sent to prison, his family shall be left to starve, while the State sets him a thief's example by stealing his wages. It is true that the State is supposed to sin against him in the interests of society; but it is possible that, upon closer study, it might be found that the interests of society could be better served by the State's paying currently to the criminal's family—his worse than widow, his worse than orphans—his earnings at a rate based upon the Trades Unions' scale of wages; or, if he has no such dependents, by giving them to the criminal himself when he leaves its custody. This might at least dispose of the grievance which the Unions have sometimes had with the State about prison cheap labor. As it is, convicts are taught trades, but organized labor protests against their exercise of their trades in prison; and, when they return to the world, they remain beggars till they can again become criminals. But, if they were given full wages in prison, they would, after paying the State all that their board, lodging and clothing were worth, still have money enough to live on till they could approve themselves worthy of honest work.

This is the business view of the matter; if we regard it from a higher point, I hope my readers will agree that the State might well pay the convict his hire merely because it is just to do so. At any rate, I venture the conjecture; and, while I am about it, I have another observation to make. We are all, in and out of jail, doing a great deal more for the State than it does for us, severally or collectively, and we ought to try, as a matter of duty toward one another, to make the State do its part; we ought to educate the State in its duties to the citizen. In a war of invasion, the State may draft us into its service and imperil our lives and limbs for an office-boy's wages; or, in any war, it may invite us to volunteer, with the promise of half or quarter pay in the form of a pension much begrudged us by patriots not drafted, or not volunteering. Even in time of peace, the State levies taxes, and imposes tasks upon us for which it makes no adequate

return. It obliges us to serve on juries for two dollars a day, while our proper incomes languish and our affairs fall into disorder. It maintains costly administrations which will not mend or clean our streets, and constabularies against which we have no recourse when they fail to protect our lives or limbs. If a burglar breaks into our houses, the city, which makes us pay its police for our protection, does not make good our losses; if trains, or trolleys, or motors maim us, the State does not pay us, but ironically allows us to bring suit for damages. If any wrong can be made to lie against the State, the State will right it only upon some such long delay and final compulsion as none but the most thrifty and frugal lover of his country could have the heart to inflict upon the injured.

The State is still, after individual despots have been largely modified or eliminated, a collective despot, mostly inexorable, almost irresponsible, and entirely inaccessible to those personal appeals which have sometimes moved the obsolete or obsolescent tyrants to pity. In its selfishness and meanness, it is largely the legislated and organized ideal of the lowest and stupidest of its citizens, whose daily life is nearest the level of barbarism. Justice must be extorted from it: a rogue may readily enrich himself in its service, but an honest man shall spend his life in a vain effort to get his due. Such facts incline us naturally to question any proposition which seems to affect the nature of the State. If the State has always stolen the wages of its prisoners, it seems to our patriotism a very good reason why it should always do so. If it has left for every, or for every other, convict whom it robs of his earnings a helpless family to suffer for want of his support, its practice is sufficient proof of its right to punish the innocent with the guilty. If it turns the destitute convict loose at the end of his sentence more depraved than at the beginning, and practically doomed to incur another imprisonment, there must be something in the nature of things which justifies the State in a cruelty apparently so monstrous.

Still, it is not impossible that the State should be something different. Even that lowest and stupidest citizen whose ideals the State so largely embodies is human. Such a citizen may wake in the dawn of some brighter day and perceive by the unwonted light that it is not well to compel a man to the repetition of crime when there is a chance of saving the community from his

renewed depredations. "Of course," the lowest and stupidest citizen will reason, "there must be something right in the present custom, just as there was formerly something right in hanging a man for the theft of a shilling; but perhaps it had better be looked into. The actual arrangement seems to be expensive."

When the lowest and stupidest citizen—who may be occupying a very high place socially, politically and financially—comes to this reasoning, it may occur to him that there is a feature of our criminal procedure which may affect him, though hitherto he has escaped. In this luminous moment it may appear to him rather droll that a citizen, not even the lowest and stupidest, may be arrested on a charge of which the genius of our law holds him innocent until he is proved guilty, and may be kept in jail till it is convenient for the State to try him, while all the sagacity of the police and all the ingenuity of the prosecution are employed in extorting and accumulating and contriving proofs of his guilt. When he is brought to trial, his torment is protracted through weeks or months, while the prosecution and the defence fight over him for his life. After the examination of the witnesses and the testimony of experts and squabble of counsel, the State will claim the last word in the summing up, speaking twice where the defence may speak but once, and outraging a yet innocent man by every conceivable defamation, by impassioned appeals to the prejudices of the jurymen, by flattery of their passions, by every insinuation from the testimony in which there is perhaps no direct proof whatever against him. All the vulgar and shabby arts of rhetoric may be employed to sway the weary minds of the twelve men forced from their proper affairs at two dollars a day, to decide whether he is guilty or not. The judge then charges them, wisely or unwisely, but unquestionably from his preoccupations concerning the matter, and they find the accused guilty or not guilty. If they find him guilty, he is sent to the death chamber to await his turn in the electric chair. His counsel may now contrive to stay execution of his sentence by this device and that, for weeks, months and years. Then, if he is brought to trial again, he may be declared innocent, as innocent while he rested in the shadow of death as ever he was, or as any of us is.

But what reparation does the State make him for his time, of which it has wasted years, and for the agony which it has in-

flicted upon an innocent man? Does it compute his wrong in money, and offer to recompense him for his loss and pain? Does it formally claim the sovereign right, the sacred privilege, of paying his counsel, the men who have saved him from its error, and kept from its annals the stain of his guiltless death? Does it declare, with forms of peculiar solemnity, in some special session of its highest tribunal, that he has been deeply wronged and that now he must be righted in the esteem of all just men? Nothing of the kind. It simply lets him go, under the cloud that it does nothing else to lift from him, and leaves him to pay the whole cost of his fight for life. Sometimes there is popular applause at the acquittal of an accused man, and then an officer commands silence in the court. But ought there to be silence in the court? Would not the court's dignity be more respected by a joyful noise, which should echo through all the land, proclaiming the escape of the State from the commission of a disgraceful blunder? As yet, the courts think not; but the circumstances may yet affect even the sort of citizen we have been imagining as grotesque. Such a citizen may say, to be sure, that we are not different from the rest of the civilized world in these features of our criminal procedure, and he can justly hold that nowhere is an accused person indemnified for his losses through the blundering of the State. He can say, and probably will continue to say, that it is enough for the accused to have got off. But is it?

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